Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1979

* * *

NO. 85, ORIGINAL

STATE OF TEXAS,

Plaintiff

V.

STATE OF OKLAHOMA,

Defendant

* * *

MOTION FOR LEAVE TO FILE COMPLAINT, COMPLAINT AND BRIEF IN SUPPORT OF MOTION

* * *

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NO. ____, ORIGINAL

STATE OF TEXAS,

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Defendant

* * *

MOTION FOR LEAVE TO FILE COMPLAINT

* * *

The State of Texas, by its Attorney General, respectfully asks leave of the Court to file its Complaint against the State of Oklahoma submitted herewith.

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* * *

COMPLAINT

* * *

The State of Texas, by its Attorney General, brings this suit against the Defendant, the State of Oklahoma, and for its cause of action, states:

I.

The original and exclusive jurisdiction of this Court is invoked under Article III, Section 2, of the Constitution of the United States, and 28 U.S.C. §1251(a)(1) (1976).

II.

The State of Texas was admitted to the Union by joint resolutions of Congress dated March 1, 1845 and December 29, 1845. 5 Stat. 797, 9 Stat. 108, respectively. In *United States v. Texas*, 162 U.S. 1 (1895) this Court established the boundary between the United States and the State of Texas, from the 100th meridian of longitude to the eastern border of the then Territory of Oklahoma, as the south bank of the Red River. In *Oklahoma v. Texas*, 256 U.S. 70 (1921) this Court

affirmed its holding in *United States v. Texas, supra,* and held, *inter alia,* that the intervening admission to the Union of the State of Oklahoma by Act of June 16, 1906, 34 Stat. 267, Ch. 3335 had no effect on the boundary between the States of Oklahoma and Texas as the south cut bank of the Red River.

III.

On June 28, 1938, Congress enacted the Flood Control Act of 1938, 52 Stat. 1215, which authorized the construction of Denison Dam by the Army Corps of Engineers on the Red River for the purposes of flood control and hydroelectric power. The construction of the Dam began in 1939 at a point on the Red River approximately 13 miles north of the City of Sherman in Grayson County, Texas. Upon completion in 1944, the Dam was closed, causing the formation of Lake Texoma west of the Dam for a distance of approximately 25 miles to the 97th meridian of longitude. The south bank of the Red River for this segment of the Texas-Oklahoma boundary is no longer visible as a result of the formation of Lake Texoma. The south bank downstream from the Dam has also been obliterated due to construction at the Dam site of a powerhouse, switchyard, and other facilities necessary for the generation of hydroelectric power at the Dam. Thus, the construction of Denison Dam has obscured a significant portion of the Texas-Oklahoma boundary.

IV.

The State of Texas asserts that the construction of Denison Dam did not change in any manner the boundary between Texas and Oklahoma. The boundary remains the south cut bank of the Red River as it existed prior to the construction of the Dam. At all times since construction of the Dam the State of Texas has exercised complete sovereignty over the area south of the original south bank of the Red River, providing for the health

and welfare of its inhabitants, enforcing its laws thereon, and doing all such other acts of dominion as are ordinarily exercised by a sovereign.

V.

The Federal Energy Regulatory Commission (FERC) is a federal agency empowered under the Federal Power Act, 16 U.S.C. §824 (1976), to regulate the sale of electricity in interstate commerce. In a proceeding, Docket No. E-9578, pursuant to said authority the FERC purports to adjudicate the boundary between Texas and Oklahoma as the *new* south shore of Lake Texoma west of Denison Dam and the *new* south bank of the Red River downstream from the Dam. By its failure to intervene the State of Oklahoma has acquiesced in this proceeding, the result of which will interfere with the sovereignty of the State of Texas over the area in controversy. The State of Oklahoma is implicitly asserting rights of dominion and sovereignty over said area. These implicit claims of the Defendant, the State of Oklahoma, have caused and will continue to cause irreparable injury to the Plaintiff, the State of Texas, and to its sovereignty for which there is now no remedy at law.

WHEREFORE, the State of Texas prays that a decree be entered declaring the boundary between the State of Texas and the State of Oklahoma, from the Grayson County line at the western edge of Lake Texoma to the northeast corner of the Army Corps of Engineers' property south of the Red River, as the south cut bank of the Red River as it existed prior to the construction of Denison Dam; that the State of Texas be declared to be the sovereign entitled to exercise jurisdiction and dominion over said area; and adjudging that the Defendant, the State of Oklahoma, has no sovereign right or interest in or to any said land or any part thereof.

Respectfully submitted,

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BRIEF IN SUPPORT OF MOTION

* * *

JURISDICTION

The State of Texas seeks to bring this suit against the State of Oklahoma under the authority of Article III, Section 2, of the Constitution of the United States, and 28 U.S.C. §1251(a)(1) (1976).

STATEMENT OF THE CASE

The purpose of this litigation is to establish and confirm the boundary between the States of Texas and Oklahoma, from the western edge of Lake Texoma to the northeast corner of the Army Corps of Engineers' property south of the Red River in Grayson County, Texas, as the south cut bank of the Red River as it existed prior to the construction of Denison Dam.

The history of the establishment of the Texas-Oklahoma boundary from the 100th meridian of longitude to the eastern border of Oklahoma can be briefly stated. The boundary has remained virtually unchanged since its original demarcation in the Treaty of 1819, 8 Stat. 252 (1821), as part of the boundary between the United States and the Spanish possessions. The definition of the boundary contained in the Treaty was construed by this Court in *United States v. Texas*, 162 U.S. 1 (1895) to be the south bank of the Red River. This construction of the Treaty was affirmed in *Oklahoma v. Texas*, 256 U.S. 70 (1921). In a later partial decree in *Oklahoma v. Texas*, 261 U.S. 340 (1923) this Court, at 341-42, defined the south bank as

> the water-washed and relatively permanent elevation or acclivity, commonly called a cut bank, along the southerly side of the river which separates its bed from the adjacent upland, whether valley or hill, and usually

> serves to confine the waters within the bed and to preserve the course of the river.
>
> The boundary between the two states is on and along that bank at the mean level attained by the waters of the river when they reach and wash the bank without overflowing it.

In 1938 Congress authorized the construction by the Army Corps of Engineers of Denison Dam on the Red River, at a point approximately 13 miles north of the City of Sherman in Grayson County, Texas, for the purposes of flood control and hydroelectric power. *See* 52 Stat. 1215 (1938). The construction of the Dam caused the formation of Lake Texoma west of the Dam site, stretching approximately 25 miles to the 97th meridian of longitude. As a result, the original south bank of the Red River is no longer visible above water. Immediately downstream from the Dam the course of the Red River was changed to accomodate the hydroelectric power facilities. Thus, the south bank of the Red River downstream from the Dam for approximately one-half mile has also been obliterated. Consequently, the boundary between Texas and Oklahoma, from the Grayson County line at the western edge of Lake Texoma to a point approximately one-half mile downstream from the dam is no longer visibly discernable.

The Federal Energy Regulatory Commission is authorized under the Federal Power Act to regulate the sale of electricity in interstate commerce. 16 U.S.C. §824 (1976). In Docket No. E-9578, a proceeding pursuant to said authority, the FERC is seeking to adjudicate the boundary between Texas and Oklahoma at Denison Dam as the south shore of Lake Texoma and the *new* south bank of the Red River downstream from the Dam. The State of Texas has intervened in this proceeding to protest the FERC's imminent violation of Texas'

jurisdiction and dominion over the area in question. The State of Oklahoma has failed to intervene. The State of Texas considers this silence of the State of Oklahoma as an implicit attempt to lay claim to the area in dispute. The State of Texas must respond to this threat to its sovereignty by invoking the original and exclusive jurisdiction of this Court, there being no other competent forum available.

ARGUMENT

I. THE COMPLAINT REFLECTS A JUSTICIABLE CASE AND CONTROVERSY OVER WHICH THE COURT HAS ORIGINAL AND EXCLUSIVE JURISDICTION.

This Court has original and exclusive jurisdiction of a case or controversy between two or more states under Article III, Section 2, of the United States Constitution and 28 U.S.C. §1251(a)(1) (1976). Due to its increasing duties with the appellate docket, this Court has limited the invocation of its original jurisdiction, and made it "obligatory only in appropriate cases." *Illinois v. City of Milwaukee, Wisconsin*, 406 U.S. 91, 93 (1972). The State of Texas respectfully submits that a boundary dispute between two states is the kind of appropriate case which this Court is obligated to adjudicate. This Court has recognized that boundary disputes between states can escalate into armed conflict without the prompt intervention and ultimate resolution by the Supreme Court. *Oklahoma v. Texas*, 258 U.S. 574 (1921). Under our federal constitutional system, the States have sacrificed the sovereign right to defend their boundaries from encroachment by neighboring states in exchange for the right to seek adjudication of a boundary dispute by the Supreme Court. The State of Texas is hereby seeking to invoke this constitutional right.

A genuine case and controversy now exists between the State of Texas and the State of Oklahoma. The failure of the State of Oklahoma to intervene in the FERC proceeding, which purports to change the Texas-Oklahoma boundary, is simply an attempt to accept guietly the territorial benefits resulting from the FERC proceeding. The State of Texas cannot permit this threat to its sovereign dominion over the area in question to go unchecked. Thus, the original and exclusive jurisdiction of this Court is being invoked.

II. THE COURT IS THE ONLY COMPETENT FORUM TO ADJUDICATE THIS CONTROVERSY.

The State of Texas has intervened in the FERC Docket No. E-9578 and moved for an indefinite stay of that proceeding pending the resolution by this court of the boundary dispute at Lake Texoma and Denison Dam. Texas submits that the FERC is incompetent to make a finding affecting the sovereign rights of the State of Texas once the State has become a party to the proceeding.

Indeed, Texas has an absolute right to a determination by the Supreme Court of its boundary with Oklahoma. In *Durfee v. Duke*, 375 U.S. 106 (1963), this Court recognized that lower court decisions involving private litigation over state boundaries could not bind the States with respect to any controversy they may have over the boundary. The Court stated that "either State may at any time protect its interest by initiating independent judicial proceedings here." 375 U.S. at 116. *See Mississippi v. Arkansas*, 415 U.S. 289 (1974). Texas is protecting its interest in the integrity of its boundary with Oklahoma by initiating this original action.

CONCLUSION

The Complaint which Texas asks leave to file presents a traditional conflict of sovereign interests and a consequent threat of irreparable damage to the State of Texas, which only the Supreme Court of the United States can remedy. Therefore, in conformity with the high purpose of the powers conferred on this Court by Article III, Section 2 of the Constitution, this Court should exercise its authority to hear and determine this dispute. The State of Texas respectfully submits that the Motion for Leave to File the Complaint should be granted.

Respectfully submitted,

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